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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

HRL

CV 12 2157

18 BAYKEEPER, a non-profit corporation,

19 Plaintiff,

20 v.

22 ZANKER ROAD RESOURCE  
23 MANAGEMENT, LTD.,

24 Defendant.

Civil No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES

(Federal Water Pollution Control Act, 33  
U.S.C. §§ 1251 et. seq.)

1 Baykeeper, by and through its counsel, hereby alleges:

2 **I. JURISDICTION AND VENUE**

3 1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal  
4 Water Pollution Control Act, 33 U.S.C. section 1251 *et seq.* (the "Clean Water Act" or the "CWA").  
5 This Court has subject matter jurisdiction over the parties and subject matter of this action pursuant to  
6 section 505(a)(1) of the CWA, 33 U.S.C. section 1365(a)(1), 28 U.S.C. section 1331 (an action for  
7 declaratory and injunctive relief arising under the Constitution and laws of the United States), and 28  
8 U.S.C. section 2201.

9 2. On February 29, 2012, Baykeeper provided notice of violations of the CWA by  
10 Defendant Zanker Road Resource Management, Limited ("Zanker") and of Baykeeper's intention to  
11 file suit against Zanker ("Notice Letter") to the Administrator of the United States Environmental  
12 Protection Agency ("EPA"); the Regional Administrator of EPA Region IX; the Executive Director of  
13 the State Water Resources Control Board ("State Board"); the Executive Officer of the Regional  
14 Water Quality Control Board, San Francisco Bay Region ("Regional Board"); the U.S. Attorney  
15 General (collectively "state and federal agencies"), and the Defendant as required by the CWA, 33  
16 U.S.C. § 1365(b)(1)(A). A copy of this Notice Letter is attached to this complaint as Exhibit 1.

17 3. More than sixty days have passed since the Notice Letter was mailed to Zanker and the  
18 state and federal agencies. Neither the EPA nor the State of California has commenced or is diligently  
19 prosecuting a court action to redress the violations alleged in this complaint. No claim in this action is  
20 barred by any prior administrative action pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g).

21 4. Venue is proper in the Northern District of California pursuant to section 505(c)(1) of  
22 the CWA, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial  
23 district.

24 **II. INTRADISTRICT ASSIGNMENT**

25 5. Intradistrict assignment of this matter to the San Jose Division of the Court is  
26 appropriate pursuant to Civil Local Rule 3-2(c). The events or omissions which give rise to  
27 Baykeeper's claims occurred in the City of San Jose, in Santa Clara County.

28 //

1     **III.    INTRODUCTION**

2           6.     This complaint seeks relief for alleged unlawful discharges of pollutants from Zanker's  
3 facilities, located at 705 Los Esteros Road, San Jose, California (the "Landfill"), and at 675 Los  
4 Esteros Road, San Jose, California (the "Processing Facility") (collectively, the "Facilities") in  
5 violation of the Clean Water Act and the State of California's General Permit No. CAS000001, Water  
6 Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Industrial Stormwater  
7 Permit"), and into waters of the United States.

8           7.     Violations of the Clean Water Act and the Industrial Stormwater Permit by numerous  
9 industrial sites are recognized as a leading cause of significant, cumulative impacts to the water quality  
10 of San Francisco Bay. With every rainfall event, hundreds of millions of gallons of polluted rainwater  
11 flow off local industrial facilities, such as Zanker's Facilities, and pour into storm drains, into local  
12 tributaries, and into the Bay. The consensus among agencies and water quality specialists is that  
13 stormwater pollution accounts for more than half of the total pollution entering the marine  
14 environment each year.

15           8.     Stormwater runoff from industrial sites such as Zanker's Facilities causes harm to  
16 humans and aquatic life. In particular, stormwater contains suspended sediment and heavy metals  
17 such as lead, mercury, copper, iron, zinc, tin, nickel, and aluminum. Exposure and ingestion of heavy  
18 metals can cause health problems in people and aquatic animals, including neurological and  
19 reproductive effects. Fish are widely used to evaluate the health of aquatic systems because pollutants  
20 accumulate in fish, which are an important part of aquatic food chains. Heavy metals have been  
21 shown to alter physiological activity in tissues and blood of fish.

22           9.     High concentrations of suspended solids ("TSS") degrade optical water quality by  
23 reducing water clarity and decreasing light available to support photosynthesis. Suspended solids have  
24 been shown to alter predator-prey relationships (for example, turbid water might make it difficult for  
25 fish to see their prey). Deposited solids alter habitat for fish, aquatic plants, and benthic organisms.  
26 TSS can also be harmful to aquatic life because numerous pollutants, including metals and PAHs, are  
27 adsorbed onto TSS. Thus, higher concentrations of TSS mean higher concentrations of toxins  
28 associated with those sediments.

1           10. Stormwater from landfills and recycling facilities contains heavy metal pollutants such  
2 as aluminum, copper, iron, lead, and zinc. Inorganic sediments, including settleable matter and  
3 suspended solids, have been shown to negatively impact species richness, diversity, and total biomass  
4 of filter feeding aquatic organisms on bottom surfaces. Metals such as copper and iron have been  
5 shown to accumulate in aquatic organisms and cause negative effects on physiology and reproduction.

6 **IV. PARTIES**

7           11. Plaintiff Baykeeper is a non-profit public benefit corporation organized under the laws  
8 of the State of California with its main office in San Francisco, California. Baykeeper members live  
9 and/or recreate in and around the San Francisco Bay area. Baykeeper is dedicated to protecting the  
10 water quality of San Francisco Bay for the benefit of its ecosystems and communities. To further  
11 these goals, Baykeeper actively seeks federal and state agency implementation of the Clean Water Act,  
12 and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

13           12. Members of Baykeeper, including citizens, taxpayers, property owners, and residents,  
14 live, work, travel, and recreate in or near San Francisco Bay, its tributaries, and adjacent wetlands, into  
15 which Zanker discharges pollutants. These Baykeeper members use and enjoy San Francisco Bay, its  
16 tributaries, and adjacent wetlands, for recreational, educational, scientific, conservation, aesthetic, and  
17 spiritual purposes. Zanker's discharge of stormwater containing pollutants impairs each of those uses.  
18 Thus, the interests of Baykeeper's members have been, are being, and will continue to be adversely  
19 affected by Zanker's failure to comply with the Clean Water Act and the Industrial Stormwater Permit.

20           13. Defendant Zanker is a corporation organized under the laws of the State of California  
21 with its principal place of business located in San Jose, California. Zanker operates two facilities  
22 where landfilling, recycling, material processing, and other industrial activities occur.

23 **V. REGULATORY BACKGROUND**

24 **Clean Water Act**

25           14. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into  
26 waters of the United States unless the discharge is in compliance with various enumerated CWA  
27 sections. Among other things, CWA section 301(a) prohibits discharges not authorized by, or in  
28

1 violation of, the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued  
2 pursuant to CWA section 402, 33 U.S.C. § 1342.

3 15. CWA section 402(b), 33 U.S.C. § 1342(b), allows each state to administer its own  
4 EPA-approved permit program for discharges. In California, the State Board and its nine Regional  
5 Boards have approval from EPA to administer an NPDES permit program for the State. The State  
6 Board and Regional Boards issue individual and general NPDES permits regulating water pollutant  
7 discharges from various categories of dischargers.

8 16. CWA section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued for  
9 stormwater discharges associated with industrial activities.

10 17. CWA section 301(b) requires that, by March 31, 1989, all point source dischargers,  
11 including those discharging polluted stormwater, must achieve technology based effluent limitations  
12 based upon Best Available Technology Economically Achievable ("BAT") for toxic and  
13 nonconventional pollutants and the Best Conventional Pollutant Control Technology ("BCT") for  
14 conventional pollutants. *See* 33 U.S.C. § 1311(b); 40 C.F.R. §§ 125.3(a)(2)(ii), 125.3(a)(2)(iii),  
15 125.3(a)(2)(iii).

16 18. CWA section 505(a)(1) provides for citizen enforcement actions against any "person,"  
17 including individuals, corporations, or partnerships, for violations of NPDES permit requirements and  
18 for unpermitted discharges of pollutants. 33 U.S.C. § 1365(a)(1); *see* 33 U.S.C. § 1362(5).

19 19. CWA section 505(a) authorizes a citizen suit action for injunctive relief. 33 U.S.C. §  
20 1365(a).

21 20. CWA violators are subject to an assessment of civil penalties of up to \$32,500 for all  
22 violations occurring on or after March 15, 2004 through January 12, 2009, and \$37,500 per day per  
23 violation for violations occurring after January 12, 2009. CWA § 309(d), 33 U.S.C. § 1319(d), and 40  
24 C.F.R. §§ 19.1-19.4.

#### 25 **State Regulations**

26 21. Section 303 of the CWA, 33 U.S.C. § 1313, requires states to adopt Water Quality  
27 Standards, including water quality objectives and beneficial uses for navigable waters of the United  
28 States. The CWA prohibits discharges from causing or contributing to a violation of such state Water

1 Quality Standards. *See* 33 U.S.C. § 1311(b)(1)(c), 40 C.F.R. §§ 122.4(a) and (d), 40 C.F.R. §  
2 122.44(d)(1).

3 22. The State of California regulates water quality through the State Board and nine  
4 Regional Boards, and each Regional Board maintains a separate Water Quality Control Plan which  
5 contains Water Quality Standards for water bodies within its geographic area.

6 23. The San Francisco Bay Regional Water Quality Control Board has adopted the “San  
7 Francisco Bay Basin (Region 2) Water Quality Control Plan (Basin Plan)” (hereafter “Basin Plan”), as  
8 amended by Resolution No. R2-2010-0100, setting forth the beneficial uses and Water Quality  
9 Standards for San Francisco Bay and its tributaries.

10 24. The Basin Plan sets forth, among other things, narrative Water Quality Standards for  
11 floating material, oil and grease, sediment, settleable matter, and suspended materials, and sets forth  
12 numeric Water Quality Standards for pH, arsenic, cadmium, chromium VI, copper, cyanide, lead,  
13 mercury, nickel, selenium, silver, tributyltin, zinc, and PAHs. *See* Basin Plan §§ 3.3.6, 3.3.7, 3.3.9,  
14 3.3.12-3.3.14, 3.3.21, and Table 3-3. The Basin Plan also includes site specific objectives (“SSO”),  
15 which are Water Quality Standards for specific sites, for certain pollutants of concern, including  
16 copper and nickel. Basin Plan Table 3-3A.

17 25. In addition, EPA has promulgated Water Quality Standards for toxic priority pollutants  
18 in all California water bodies (the “California Toxics Rule” or “CTR”), which apply to San Francisco  
19 Bay and its tributaries, unless expressly superseded by the Basin Plan. 65 Fed. Reg. 31682 (May 18,  
20 2000), 40 C.F.R. § 131.38.

#### 21 **The General Industrial Stormwater Permit**

22 26. In California, the State Board has elected to issue a single, statewide general permit  
23 applicable to all stormwater discharges associated with industrial activity. *See* NPDES General Permit  
24 No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as  
25 amended by Order No. 97-03-DWQ (“Industrial Stormwater Permit”). The Industrial Stormwater  
26 Permit is an NPDES permit pursuant to CWA section 402(p), 33 U.S.C. § 1342(p). To discharge  
27 stormwater lawfully in California, industrial dischargers must secure coverage under the Industrial  
28

1 Stormwater Permit and comply with its terms or obtain and comply with an individual NPDES permit.  
2 Industrial Stormwater Permit, pg II.

3 27. Violations of the Industrial Stormwater Permit are also violations of the CWA.  
4 Industrial Stormwater Permit, Order Part C(1).

5 28. The Industrial Stormwater Permit contains certain absolute prohibitions. Discharge  
6 Prohibition A(1) of the Industrial Stormwater Permit prohibits the direct or indirect discharge of  
7 materials other than stormwater ("non-storm water discharges"), which are not otherwise authorized  
8 by an NPDES permit, to the waters of the United States. Industrial Stormwater Permit, Order Part  
9 A(1). Discharge Prohibition A(2) of the Industrial Stormwater Permit prohibits stormwater discharges  
10 that cause or threaten to cause pollution, contamination, or nuisance. *Id.* at Order Part A(2).  
11 Receiving Water Limitation C(1) of the Industrial Stormwater Permit prohibits discharges that  
12 adversely impact human health or the environment. *Id.* at Order Part C(1). Receiving Water  
13 Limitation C(2) of the Industrial Stormwater Permit prohibits discharges that cause or contribute to an  
14 exceedance of any applicable water quality standard contained in a Statewide Water Quality Control  
15 Plan or the applicable Regional Board's Basin Plan. *Id.* at Order Part C(2).

16 29. Under the CWA and the Industrial Stormwater Permit, dischargers must employ  
17 measures to reduce or eliminate stormwater pollution that constitute BAT and BCT. 33 U.S.C. §  
18 1311(b); Industrial Stormwater Permit, Order Part B(3). EPA has developed Benchmarks that are  
19 objective standards to evaluate whether a permittee's Best Management Practices ("BMPs") achieve  
20 compliance with the BAT/BCT standards as required by Effluent Limitation B(3). *Id.*; NPDES Storm  
21 Water Multi-Sector General Permit for Industrial Activities ("Multi-Sector Permit"), 65 Federal  
22 Register 64746, 64766 (2000); Multi-Sector Permit, 73 Federal Register 56572, 56573 (2008)  
23 (incorporating Fact Sheet, p. 103, available at <http://www.epa.gov/npdes/stormwater/msgp>).

24 30. Dischargers must develop and implement a Storm Water Pollution Prevention Plan  
25 ("SWPPP") at the time industrial activities begin. Industrial Stormwater Permit, Section A(1)(a) and  
26 Order Part E(2). The SWPPP must identify and evaluate sources of pollutants associated with  
27 industrial activities that may affect the quality of storm and authorized non-stormwater discharges  
28 from the facility. *Id.* at Section A(2). The SWPPP must identify and implement site-specific BMPs to

1 reduce or prevent pollutants associated with industrial activities in stormwater and authorized non-  
2 stormwater discharges. *Id.* The SWPPP must include BMPs that achieve pollutant discharge  
3 reductions attainable via BAT and BCT. *Id.* at Order Part B(3).

4 31. The SWPPP must include: a narrative description and summary of all industrial  
5 activity, potential sources of pollutants, and potential pollutants; a site map indicating the stormwater  
6 conveyance system, associated points of discharge, direction of flow, areas of actual and potential  
7 pollutant contact, including the extent of pollution generating activities, nearby water bodies, and  
8 pollutant control measures; a description of stormwater management practices; a description of the  
9 BMPs to be implemented to reduce or prevent pollutants in stormwater discharges and authorized non-  
10 stormwater discharges; the identification and elimination of non-stormwater discharges; the location  
11 where significant materials are being shipped, stored, received, and handled, as well as the typical  
12 quantities of such materials and the frequency with which they are handled; a description of dust and  
13 particulate generating activities; and a description of individuals and their current responsibilities for  
14 developing and implementing the SWPPP. Industrial Stormwater Permit, Sections A(1-10).

15 32. The Industrial Stormwater Permit also requires facility operators to properly operate  
16 and maintain any facilities and systems of treatment and control installed or used to achieve  
17 compliance with the conditions of the Industrial Stormwater Permit and requirements of the SWPPP at  
18 all times. Industrial Stormwater Permit, Section C: Standard Provisions. The SWPPP and site maps  
19 must be assessed annually and revised as necessary to insure accuracy and effectiveness. *Id.* at  
20 Section A(1) and Sections B(3-4).

21 33. Facility operators are required to develop and implement a monitoring and reporting  
22 program ("MRP") when industrial activities begin at a facility. Industrial Stormwater Permit at  
23 Section B: Monitoring Program and Reporting Requirements (1) and Order Part E(3). The MRP must  
24 ensure that stormwater discharges are in compliance with the Discharge Prohibitions, Effluent  
25 Limitations, and Receiving Water Limitations specified in the Industrial Stormwater Permit. *Id.* at  
26 Section B(2). The MRP must ensure that practices at the facility to prevent or reduce pollutants in  
27 stormwater and authorized non-stormwater discharges are evaluated and revised to meet changing  
28 conditions at the facility, including revision of the SWPPP. *Id.*

1           34. Pursuant to the monitoring and reporting requirements of the Industrial Stormwater  
2 Permit, facility operators must conduct ongoing visual observations of stormwater and non-stormwater  
3 discharges and record responsive measures taken to eliminate unauthorized non-stormwater and to  
4 reduce or prevent pollutants in stormwater and authorized non-stormwater discharges. Industrial  
5 Stormwater Permit at Sections B(3-4). Facility operators must collect samples of stormwater  
6 discharges from all locations where stormwater may be discharged from the facility. *Id.* at Sections  
7 B(5) and (7). Stormwater samples must be analyzed for pH, total suspended solids, total organic  
8 carbon (or oil and grease as a substitute), specific conductance, and toxic chemicals and other  
9 pollutants which are likely to be present in stormwater in significant quantities. *Id.* at Section B(5).

10 **VI. STATEMENT OF FACTS**

11           35. Zanker operates two facilities (the "Facilities") located in San Jose adjacent to wetlands  
12 and San Francisco Bay. The Zanker Road Landfill (the "Landfill") is at 705 Los Esteros Road, has  
13 wetlands on the property, and is adjacent to wetlands which are connected to San Francisco Bay. The  
14 Zanker Material Processing Facility (the "Processing Facility") is at 675 Lost Esteros Road, has  
15 wetlands on the property, is adjacent to wetlands, and is adjacent to the Don Edwards San Francisco  
16 Bay National Wildlife Refuge, which is adjacent to San Francisco Bay.

17           36. The Facilities are regulated by the Industrial Stormwater Permit.

18           37. The Facilities provide recycling and landfill services. Operations generally include  
19 sorting and processing construction and demolition waste, transporting materials on and off site,  
20 storage of waste and processed materials, and truck and equipment operation.

21           38. Operations at the Facilities occur outdoors and are causing pollutants to be exposed to  
22 rainfall.

23           39. Vehicles and equipment at the Facilities expose many other sources of pollution to the  
24 elements, including gasoline, diesel fuel, anti-freeze, battery fluids, and hydraulic fluids.

25           40. The types of pollutants that the Facilities release into the immediate environment  
26 include, among others: dust, debris, and total suspended solids ("TSS"); toxic metals such as copper,  
27 iron, lead, and zinc; petroleum products including oil, gasoline, grease, and diesel fuel; and chemical  
28 admixtures, battery fluids, acids, solvents, and pH-affecting substances.

1           41.     The industrial materials stored and the pollutants generated at the Facilities are exposed  
2 to stormwater flows.

3           42.     Activities at the Facilities generate significant dust and particulate matter, which  
4 contain pollutants and settle on surfaces within the Facilities. During rain events, this pollution  
5 washes off of those surfaces and into nearby wetlands, sloughs, and the Bay.

6           43.     Stormwater discharges off the Facilities at several locations, which lead to nearby  
7 sloughs and wetlands which are connected to San Francisco Bay.

8           **Zanker's Activities Contributing to CWA Violations**

9           44.     Zanker has not developed and/or implemented adequate SWPPPs at the Facilities.

10          45.     Zanker has not developed and/or implemented BMPs that adequately minimize the  
11 exposure of pollutants at the Facilities to stormwater.

12          46.     Zanker has not developed and/or implemented BMPs at the Facilities that adequately  
13 control and minimize polluted runoff from the Facilities.

14          47.     Zanker has not developed and/or implemented BMPs at the Facilities that adequately  
15 treat and remove pollutants in stormwater prior to discharge.

16          48.     Zanker has not developed and/or implemented adequate measures to reduce or  
17 eliminate stormwater pollution that constitute the Best Available Technology Economically  
18 Achievable ("BAT") and the Best Conventional Pollutant Control Technology ("BCT").

19          49.     Zanker has not developed and/or implemented BMPs at the Facilities to meet EPA  
20 Benchmarks or applicable Water Quality Standards.

21          50.     Zanker has not adequately evaluated and revised its SWPPPs for the Facilities to  
22 address these failures. Zanker has also failed to properly operate and maintain the structures and  
23 systems that have been put in place at the Facilities to achieve compliance with the Industrial  
24 Stormwater Permit and its SWPPP requirements.

25          51.     Zanker has not developed and/or implemented adequate MRPs at the Facilities.

26          52.     Zanker's monitoring and reporting activities have not resulted in practices that  
27 adequately reduce or prevent pollutants from discharging from the stormwater flows from the  
28 Facilities.

53. Zanker's monitoring activities have not effectively identified compliance problems at the Facilities or resulted in effective revision of the SWPPPs.

54. Due to Zanker's lack of effective pollution prevention measures, its failure to implement effective best management practices, and its failure to implement an effective monitoring and reporting program, stormwater from the Facilities becomes polluted with many constituents. Dust, paint, toxic metals such as copper, iron, zinc, and aluminum; petroleum products including fuels and oil, acids and solvents; and TSS and pH-affecting substances become entrained in stormwater when such water flows over and across the landfill and outdoor processing areas of the Facilities. This polluted stormwater is discharged into waters of the United States including sloughs and wetlands on and around the Facilities which are adjacent to and tributaries of San Francisco Bay.

55. Zanker's own stormwater sampling indicates that Zanker's discharges of stormwater are consistently contaminated with higher levels of pollutants than is permissible under the Industrial Stormwater Permit.

56. Zanker's own stormwater sampling indicates that Zanker's discharges of stormwater are consistently contaminated with higher levels of pollutants than is permissible under the Basin Plan.

57. Zanker's own stormwater sampling indicates that Zanker's discharges of stormwater are consistently contaminated with higher levels of pollutants than is permissible under the CTR.

58. Zanker's own stormwater sampling indicates that Zanker's discharges of stormwater are consistently contaminated with higher levels of pollutants than is consistent with best management practices that constitute BAT and/or BCT.

59. Zanker's repeated stormwater exceedances of EPA Benchmarks over the past five years for pollutants including aluminum, copper, iron, lead, magnesium, zinc, total suspended solids, chemical oxygen demand, and electrical conductivity indicate that Zanker has failed and continues to fail to meet BAT/BCT.

## VII. CLAIMS

### FIRST CLAIM FOR RELIEF

#### **Discharges in Violation of Permit Prohibitions of the Industrial Stormwater Permit**

**(Violations of 33 U.S.C. § 1311)**

1           60. Plaintiff incorporates the allegations contained in all preceding paragraphs as though  
2 fully set forth herein.

3           61. Since at least February 28, 2007, Zanker has been discharging polluted stormwater  
4 from the Facilities in violation of the prohibitions of the Industrial Stormwater Permit during every  
5 significant rain event (defined by the United States Environmental Protection Agency as a rainfall  
6 event generating 0.1 inches or more of rain). *See* Exhibit 1, Notice Letter, Attachment 4.

7           62. The polluted stormwater discharged from the Facilities during every significant rain  
8 event contains pollutants harmful to fish, plant, bird life, and human health that have adversely  
9 affected human health and the environment in violation of Receiving Water Limitation C(1) of the  
10 Industrial Stormwater Permit.

11           63. The discharges of polluted stormwater from the Facilities have in the past caused, and  
12 will continue to cause, pollution, contamination and/or nuisance to the waters of the United States in  
13 violation of Discharge Prohibition A(2) of the Industrial Stormwater Permit and the Water Quality  
14 Standards set forth in the Basin Plan.

15           64. The discharges of polluted stormwater from the Facilities have in the past caused or  
16 contributed to, and continue to cause or contribute to, exceedances of Water Quality Standards in  
17 violation of Receiving Water Limitation C(2) of the Industrial Stormwater Permit including sediment,  
18 settleable matter, suspended materials, copper, lead, and zinc.

19           65. Every day since at least February 28, 2007 that Zanker has discharged polluted  
20 stormwater from the Facilities in violation of the Industrial Stormwater Permit is a separate and  
21 distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

22           66. By committing the acts and omissions alleged above, Zanker is subject to an  
23 assessment of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and  
24 1365.

25           67. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §  
26 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm  
27 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy or adequate remedy at  
28 law.

1           68. An action for declaratory relief is authorized by 28 U.S.C. section 2201(a) because an  
2 actual controversy exists as to the rights and other legal relations of the Parties.

3           Wherefore, Plaintiff prays for judgment against Zanker as set forth hereafter.

4                                   **SECOND CLAIM FOR RELIEF**

5                   **Discharge in Violation of Effluent Limitations of the Industrial Stormwater Permit**  
6                                   **(Violations of 33 U.S.C. § 1311)**

7           69. Plaintiff incorporates the allegations contained in all preceding paragraphs as though  
8 fully set forth herein.

9           70. Zanker has discharged and continues to discharge stormwater from the Facilities  
10 containing levels of pollutants that do not achieve compliance with the BAT/BCT requirements in  
11 violation of Effluent Limitation B(3) of the Industrial Stormwater Permit during every significant rain  
12 event occurring from February 28, 2007 through the present. Zanker's failure to develop and/or  
13 implement BMPs that achieve the pollutant discharge reductions attainable via BAT or BCT at the  
14 Facilities, is a violation of Effluent Limitation B(3) of the Industrial Stormwater Permit and the CWA.  
15 See Industrial Stormwater Permit, Order Part B(3); 33 U.S.C. § 1311(b).

16           71. Every day since at least February 28, 2007 that Zanker has discharged stormwater  
17 containing pollutants in violation of Effluent Limitation E(3), Zanker has failed to develop or  
18 implement BMPs that achieve pollutant discharge reductions attainable via BAT or BCT at the  
19 Facilities, in violation of the Industrial Stormwater Permit. Each day is a separate and distinct  
20 violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

21           72. Zanker's CWA violations described in the paragraphs above will continue in the future  
22 until Zanker develops and implements BMPs at the Facilities that achieve pollutant discharge  
23 reductions attainable via BAT and BCT.

24           73. By committing the acts and omissions alleged above, Zanker is subject to an  
25 assessment of civil penalties pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d)  
26 and 1365.

27           74. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §  
28 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm

1 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy or adequate remedy at  
2 law.

3 75. An action for declaratory relief is authorized by 28 U.S.C. section 2201(a) because an  
4 actual controversy exists as to the rights and other legal relations of the Parties.

5 Wherefore, Plaintiff prays for judgment against Zanker as set forth hereafter.

6 **THIRD CLAIM FOR RELIEF**

7 **Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan,**  
8 **in Violation of the Industrial Stormwater Permit**

9 **(Violations of 33 U.S.C. § 1311)**

10 76. Plaintiff incorporates the allegations contained in all preceding paragraphs as though  
11 fully set forth herein.

12 77. Zanker has failed and continues to fail to develop and implement adequate SWPPPs or  
13 implement all necessary revisions to the SWPPPs for the Facilities as required by the Industrial  
14 Stormwater Permit, Section A: Storm Water Pollution Prevention Plan (1), (2), and (9).

15 78. Zanker has failed and continues to fail to develop or implement SWPPPs for the  
16 Facilities that include BMPs that meet the requirements of Section A: Storm Water Pollution  
17 Prevention Plan Requirements of the Industrial Stormwater Permit.

18 79. Zanker has failed and continues to fail to develop or implement SWPPPs at the  
19 Facilities that prevent discharges from violating the Discharge Prohibitions, Effluent Limitations, and  
20 Receiving Water Limitations of the Industrial Stormwater Permit.

21 80. Each day since February 28, 2007 that Zanker has failed to adequately develop and/or  
22 implement SWPPPs for the Facilities in violation of the Industrial Stormwater Permit is a separate and  
23 distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

24 81. Zanker has been in violation of the SWPPP requirements every day since February 28,  
25 2007. Zanker will continue to be in violation of the SWPPP requirements each day that Zanker fails to  
26 develop and fully implement adequate SWPPPs for its Facilities.

27 82. By committing the acts and omissions alleged above, Zanker is subject to an  
28 assessment of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and

1 1365.

2 83. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §  
3 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm  
4 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy or adequate remedy at  
5 law.

6 84. An action for declaratory relief is authorized by 28 U.S.C. section 2201(a) because an  
7 actual controversy exists as to the rights and other legal relations of the Parties.

8 Wherefore, Plaintiff prays for judgment against Zanker as set forth hereafter.

9 **FOURTH CLAIM FOR RELIEF**

10 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program,**  
11 **in Violation of the Industrial Stormwater Permit**  
12 **(Violations of 33 U.S.C. § 1311)**

13 85. Plaintiff incorporates the allegations contained in all preceding paragraphs as though  
14 fully set forth herein.

15 86. Zanker has failed and continues to fail to develop and implement adequate monitoring  
16 and reporting programs ("MRP") and implement all necessary revisions to the MRPs at the Facilities  
17 as required by the Industrial Stormwater Permit, Section B: Monitoring Program and Reporting  
18 Requirements and Order Part E(3).

19 87. Zanker's MRPs have failed and continue to fail to ensure that discharges from the  
20 Facilities are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving  
21 Water Limitations as required in Sections B(2) and (10) of the Industrial Stormwater Permit.

22 88. Zanker has failed and continues to fail to effectively identify compliance problems at  
23 the Facilities or effectively revise the SWPPPs to address such pollution problems as required by  
24 Sections B(2-4) of the Industrial Stormwater Permit.

25 89. Each day since February 28, 2007 that Zanker has failed to develop and implement  
26 adequate MRPs for the Facilities in violation of the Permit is a separate and distinct violation of CWA  
27 section 301(a), 33 U.S.C. § 1311(a).

28 90. Zanker has been in violation of the MRP requirements every day since February 28,

1 2007. Zanker will continue to be in violation of the MRP requirements each day that Zanker fails to  
2 develop and fully implement adequate MRPs for its Facilities.

3 91. By committing the acts and omissions alleged above, Zanker is subject to an  
4 assessment of civil penalties pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d)  
5 and 1365.

6 92. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §  
7 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm  
8 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy at  
9 law.

10 93. An action for declaratory relief is authorized by 28 U.S.C. section 2201(a) because an  
11 actual controversy exists as to the rights and other legal relations of the Parties.  
12 Wherefore, Plaintiff prays for judgment against Zanker as set forth hereafter.

13 **FIFTH CLAIM FOR RELIEF**

14 **Unpermitted Discharge of Pollutants in Violation of CWA Section 301(a)**

15 **(Violations of 33 U.S.C. § 1311)**

16 94. Plaintiff incorporates the allegations contained in all preceding paragraphs as though  
17 fully set forth herein.

18 95. Zanker has discharged and continues to discharge pollutants from the Facilities in  
19 violation of the Industrial Stormwater Permit. Thus, Zanker's discharges are the unpermitted  
20 discharge of pollutants from the Facilities to waters of the United States without a permit, in violation  
21 of CWA section 301(a), 33 U.S.C. § 1311(a).

22 96. Zanker has been in violation of CWA section 301(a) every day it has discharged  
23 stormwater from the Facilities to waters of the United States since February 28, 2007. Zanker will  
24 continue to be in violation of the CWA each day that it discharges stormwater from the Facilities to  
25 waters of the United States.

26 97. By committing the acts and omissions alleged above, Zanker is subject to an  
27 assessment of civil penalties pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d)  
28 and 1365.

1           98. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §  
2 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm  
3 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy at  
4 law.

5           99. An action for declaratory relief is authorized by 28 U.S.C. section 2201(a) because an  
6 actual controversy exists as to the rights and other legal relations of the Parties.

7 Wherefore, Plaintiff prays for judgment against Zanker as set forth hereafter.

8 **RELIEF REQUESTED**

9           1. Wherefore, Baykeeper respectfully requests this Court to grant the following relief:

10           a. Declare Defendant to have violated and to be in violation of sections 301(a) and  
11 (b) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and (b), for discharging pollutants from its Facilities  
12 in violation of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for failing to  
13 meet effluent limitations which include Best Available Technology Economically Achievable  
14 ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements, and for failing  
15 to comply with all substantive and procedural requirements of the following:

16                   i. The State of California's General Permit No. CAS000001, Water  
17 Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Industrial Stormwater  
18 Permit");

19                   ii. The San Francisco Bay Basin (Region 2) Water Quality Control Plan  
20 (Basin Plan), as amended by Resolution No. R2-2010-0100 ("Basin Plan"); and

21                   iii. The California Toxics Rule, 65 Fed. Reg. 31682 (May 18, 2000), 40  
22 C.F.R. § 131.38 ("CTR");

23           b. Enjoin Defendant from discharging pollutants from its Facilities to the adjacent  
24 sloughs, wetlands, and San Francisco Bay;

25           c. Enjoin Defendant to restore all receiving waters damaged by Defendant's illegal  
26 discharges of pollutants from the Facilities;

27           d. Enjoin Defendant from violating sections 301(a) and (b) of the Clean Water Act  
28 at the Facilities;

1 e. Enjoin Defendant from violating the substantive and procedural requirements of  
2 the Industrial Stormwater Permit at the Facilities;

3 f. Enjoin Defendant from violating the substantive and procedural requirements of  
4 the Basin Plan at the Facilities;

5 g. Enjoin Defendant from violating the substantive and procedural requirements of  
6 the CTR at the Facilities;

7 h. Order Defendant to pay civil penalties of up to \$32,500 for all violations  
8 between January 21, 2006 and through January 12, 2009, and \$37,500 per day per violation for  
9 violations occurring after January 12, 2009 in accordance with CWA Section 309(d), 33 U.S.C. §  
10 1319(d) and 40 C.F.R. §§ 19.1-19.4 (2009).

11 i. Award plaintiff its costs (including reasonable attorney, witness, and consultant  
12 fees) as authorized by the CWA, 33 U.S.C. § 1365(d);

13 j. Award such other relief as this Court may deem appropriate.  
14

15 Dated: April 30, 2012

Respectfully Submitted,

16  
17 By: 

18 Jason Flanders  
19 Attorney for Plaintiff  
20 BAYKEEPER  
21  
22  
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24  
25  
26  
27  
28

# **EXHIBIT 1**



February 29, 2012

*VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED*

Richard A. Cristina  
Agent for Service of Process for:  
Zanker Road Resource Management, Ltd.,  
A California Limited Partnership  
1500 Berger Drive  
San Jose, CA 95112

Scott Beall  
Zanker Road Resource Management, Ltd.  
1500 Berger Drive  
San Jose, CA 95112

Scott Beall  
Zanker Road Landfill  
705 Los Esteros Road  
San Jose, CA 95134

Jillian Hogan  
Zanker Material Processing Facility  
675 Los Esteros Road  
San Jose, CA 95134

**Re: Notice of Violation and Intent to File Suit under the Clean Water Act**

Dear Sir or Madam:

I am writing on behalf of San Francisco Baykeeper ("Baykeeper") to give notice that Baykeeper intends to file a civil action against Zanker Road Resource Management, Limited ("You" or "Your" or "Zanker") for Your violations of the Clean Water Act ("CWA") at the Zanker Road Landfill and the Zanker Material Processing Facility (collectively, the "Facilities") in San Jose, California.

This letter addresses Zanker's unlawful discharge of pollutants from its industrial facilities into San Francisco Bay and the ongoing and continuous violations of the substantive and procedural requirements of the Clean Water Act and National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Industrial Stormwater Permit").



Pollution hotline: 1 800 KEEP BAY  
www.baykeeper.org

785 Market Street, Suite 850  
San Francisco, CA 94103  
Tel (415) 856-0444  
Fax (415) 856-0443

Notice of Intent to File Suit  
February 29, 2012  
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CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of his or her intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur.

As required by the CWA, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred and which continue to occur at Zanker's Facilities. Baykeeper's investigations have uncovered significant violations of the Industrial Stormwater Permit at Your Facilities. Consequently, You are hereby placed on formal notice from Baykeeper that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, Baykeeper intends to file suit in federal court against Zanker under CWA section 505(a), 33 U.S.C. §1365(a), for CWA violations. These violations of the Order and the CWA are described more fully below.

During the 60-day notice period, we would like to discuss effective remedies for the violations identified in this letter. If You wish to pursue such discussions, we suggest that You initiate those discussions within the next twenty (20) days so that they may be completed at the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court even if discussions are continuing when that period ends.

## **I. BACKGROUND**

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its main office in San Francisco, California. Baykeeper's purpose is to preserve, protect, and defend the environment, wildlife, and natural resources of San Francisco Bay, its tributaries, and other waters in the Bay Area. To further its goals, Baykeeper actively seeks federal and state agency implementation of state and federal water quality related laws, and as necessary, directly initiates enforcement actions on behalf of itself and its members. Baykeeper has over two thousand members who use and enjoy the San Francisco Bay and other waters for various recreational, educational, and spiritual purposes. Baykeeper's members' use and enjoyment of these waters are impacted by Zanker's operations.

In most of the San Francisco Bay area, stormwater flows untreated either directly, or through the storm drain system, into San Francisco Bay and other receiving waters. The consensus among agencies and water quality specialists is that stormwater pollution accounts for more than half of the total pollution entering the Bay environment each year. With every rainfall event, hundreds of millions of gallons of polluted rainwater, originating from area industries, pour into the Bay and its tributaries. These contaminated stormwater discharges can and must be controlled for the Bay ecosystem to regain its health.

Discharges of stormwater and non-stormwater from landfills and recycling/processing facilities are of significant concern because the industrial activities associated with these sites make various pollutants particularly accessible to stormwater.

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Specifically, facilities such as Zanker's that are engaged in collecting, processing, recycling, and landfilling materials including construction and demolition debris tend to store this material in large piles open to wind and stormwater flows. In addition, landfills and recycling facilities generate dust, particulate matter, and cause contaminants such as heavy metals to come into contact with stormwater.

## **II. THE LOCATION OF THE ALLEGED VIOLATIONS**

The violations alleged in this notice letter have occurred and continue to occur at the Zanker Road Landfill at 705 Los Esteros Road, San Jose, CA (the "Landfill") and at the Zanker Material Processing Facility at 675 Los Esteros Road, San Jose, CA (the "Processing Facility"). Contaminated stormwater discharges from the Facilities into nearby wetlands which are adjacent to and connected to San Francisco Bay. Violations of the substantive and procedural requirements of the General Industrial Permit and the Clean Water Act have occurred and continue to occur at the Facilities.

### **A. Zanker Road Landfill**

Zanker Road Resource Management Ltd. operates the Landfill, located at 705 Los Esteros Road, San Jose, California. The Landfill is bounded on the south by undeveloped land, on the east by an unnamed slough, on the west by wetlands adjacent to the Bay, and on the north by the unnamed slough and salt ponds, all of which are connected to San Francisco Bay via wetlands and Artesian slough. The Landfill contains unrecyclable and unusable materials remaining after the demolition/recycling process. Zanker collects stormwater from six discharge points at the Landfill, although other discharge points may exist.

### **B. Zanker Material Processing Facility**

Zanker Road Resource Management Ltd. also operates the Processing Facility, located at 675 Los Esteros Road, San Jose, California. The Processing Facility is bordered by undeveloped land and the Don Edwards San Francisco Bay National Wildlife Refuge, which is adjacent to the Bay. Zanker collects samples from three locations, one of which is sheet flow off the front driveway. It is divided into three different processing areas, which process demolition debris, mixed debris, and wood waste. Materials that cannot be recycled are taken to the Landfill.

### **C. The Affected Waters**

Stormwater from the Facilities reaches San Francisco Bay, through discharge to the adjacent wetlands and through nearby sloughs, including Artesian Slough which flows into the Bay. San Francisco Bay and the adjacent wetlands are waters of the United States. The CWA requires that water bodies such as San Francisco Bay meet water quality objectives which protect specific "beneficial uses." The beneficial uses of the San Francisco Bay and its tributaries include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water

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contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat.

The San Francisco Bay Basin (Region 2) Water Quality Control Plan ("Basin Plan") seeks to protect and maintain aquatic ecosystems and the resources those systems provide to society through water quality objectives and standards.<sup>1</sup> The Basin Plan acknowledges discharges of urban industrial site stormwater as a significant source of pollution adversely affecting the quality of local waters. Contaminated stormwater from Zanker's Facilities adversely impacts the water quality of San Francisco Bay watershed and threaten the ecosystem of this watershed, which includes significant habitat for listed rare and endangered species. The discharge of pollutants from Zanker's Facilities also negatively impacts the water and aquatic sediments near the Facilities.

San Francisco Bay and its shoreline, tributaries, and adjacent wetlands are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished the Bay's once-abundant and varied fisheries, the Bay and its wetlands and tributaries are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Stormwater contaminated with sediment, heavy metals, and other pollutants harms the special aesthetic and recreational significance that the San Francisco Bay has for people in the surrounding communities. San Francisco Bay is used by kayakers and windsurfers, as well as recreational and subsistence anglers. The public's usage of the San Francisco Bay for water contact sports exposes many people to toxic metals and other contaminants in stormwater runoff. Non-contact recreational and aesthetic opportunities, such as wildlife observation, also are damaged by stormwater contaminants discharged to San Francisco Bay.

It is unlawful to discharge pollutants to waters of the United States, such as San Francisco Bay, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. You or Your predecessor in interest have submitted an NOI to be authorized to discharge stormwater at the Facilities under the Industrial Stormwater Permit. Other than Your discharges covered under the Industrial Stormwater Permit, Your Facilities lack NPDES permit authorization for any other discharges of pollutants into waters of the United States.

Based on information available to Baykeeper, You have violated and are in violation of the Industrial Stormwater Permit and the Clean Water Act. Consequently, You are hereby placed on formal notice from Baykeeper that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit, Baykeeper

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<sup>1</sup> The Basin Plan is published by EPA at:

[http://water.epa.gov/scitech/swguidance/standards/wqslibrary/upload/2009\\_03\\_16\\_standards\\_wqslibrary\\_c\\_a\\_ca\\_9\\_san\\_francisco.pdf](http://water.epa.gov/scitech/swguidance/standards/wqslibrary/upload/2009_03_16_standards_wqslibrary_c_a_ca_9_san_francisco.pdf). (Last accessed on 2/28/12).

The Basin Plan is also published by the Regional Board at:

[http://www.waterboards.ca.gov/sanfranciscobay/basin\\_planning.shtml#2004basinplan](http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan). (Last accessed on 2/28/12).

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intends to file suit in federal court against You under CWA section 505(a), 33 U.S.C. § 1365(a), for Your violations of the CWA.

### **III. THE ACTIVITIES AT THE FACILITIES ALLEGED TO CONSTITUTE VIOLATIONS AND THE EFFLUENT LIMITATIONS VIOLATED**

Operations at Zanker's Facilities occur outdoors and are exposed to rainfall, and include but are not limited to: sorting and processing construction and demolition waste, transporting materials on and off site, storage of waste materials, and truck and equipment operation. Outdoor service vehicles track dust, particulate matter, and other contaminants to areas on and off the premises at the Facilities. These vehicles also expose many other sources of pollution to the elements, including gasoline, diesel fuel, anti-freeze, battery fluids, and hydraulic fluids. Operations, such as the sorting and processing of construction and demolition waste, release pollutants into the environment. These pollutants can include dust and debris; toxic metals such as copper, iron, and aluminum; petroleum products including oil, gasoline, grease, and diesel fuel; chemical admixtures, battery fluids, acids and solvents; total suspended solids ("TSS") and pH-affecting substances, and other pollutants.

As a result of the numerous pollutant-generating activities at Zanker's Facilities that occur outdoors and that are exposed to rainfall, contaminated stormwater runs off Zanker's Facilities and discharges into nearby sloughs and wetlands of San Francisco Bay. Information available to Baykeeper indicates that You have failed to comply with all requirements of the Industrial Stormwater Permit. As further described below, these actions all constitute violations of CWA.

#### **A. Discharges in Violation of the Industrial Stormwater Permit**

The CWA provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharger is in compliance with the terms of a NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). Zanker's Facilities discharge stormwater associated with industrial activity to San Francisco Bay and its tributaries. The Industrial Stormwater Permit authorizes Your discharges of stormwater, conditioned on Your compliance with the terms of the General Permit. Information available to Baykeeper indicates that Your stormwater discharges from the Facilities have violated several of these permit terms, thereby violating the CWA. *Id.*

##### **1. Discharges in Excess of BAT/BCT Levels**

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from Zanker's Facilities in concentrations above the level commensurate with the application of BAT and BCT. Industrial Stormwater Permit, Order Part B(3). EPA and the Santa Ana Regional Board have published Benchmark Values set at the maximum pollutant concentration present if an industrial facility is

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employing BAT and BCT.<sup>2</sup> Based on Your self-reported stormwater sampling data, discharges of stormwater from Your Facilities contain pollutant levels in excess of Benchmark Values, an objective measure for determining whether Your discharges are in compliance with BAT and BCT requirements for discharges of stormwater associated with industrial activity. Available information indicates that You have failed and are failing to employ measures that constitute BAT and BCT for landfills and recycling facilities in violation of the requirements of the Industrial Stormwater Permit. Such BAT and BCT measures could include, but are not limited to, moving certain polluting generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce the build-up of pollutants on-site, and other similar measures for reducing stormwater pollutant discharges to the limits of available, economically achievable technology.

Specific examples of instances when Your stormwater discharges exceeded Benchmarks can be found in Attachments 2 and 3. These ongoing exceedances over the past five years also indicate that each time You discharge stormwater, You are not meeting BAT and BCT requirements. Baykeeper alleges and puts You on notice that each day that You have discharged stormwater from the Facilities, Your stormwater contained levels of pollutants which may be exceeding Benchmark Values for pH, specific conductivity, total suspended solids ("TSS"), oil and grease, chemical oxygen demand ("COD"), iron, copper, aluminum, magnesium, nickel, arsenic, and/or zinc, among other pollutants. Baykeeper alleges that You have discharged stormwater containing excessive levels of pollutants from the Facilities to San Francisco Bay during at least every significant local rain event over 0.1 inches in the last five years.<sup>3</sup> Attachment 4 compiles all dates in the last five (5) years when a significant rain event occurred.

Baykeeper alleges that Your unlawful discharges of stormwater from the Facilities with levels of pollutants exceeding BAT and BCT levels of control have occurred and continue to occur during all significant rain events. Further, Zanker's ongoing discharge of stormwater containing levels of pollutants above Benchmark Values and BAT- and BCT-based levels of control necessarily means that You have not developed and/or implemented sufficient BMPs at Your Facilities to prevent stormwater flows from coming into contact with the sources of contaminants at the Facilities or otherwise to control the discharge of pollutants from the Facilities. You have not developed and/or implemented adequate pollution controls to meet BAT and BCT at the Facilities, and You have violated and will continue to violate the Clean Water Act each and every day You discharge stormwater without meeting BAT/BCT. Each discharge of

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<sup>2</sup> These Benchmark Values are presented in Attachment 1 and can be found at: [http://www.waterboards.ca.gov/santaana/water\\_issues/programs/stormwater/docs/sbpermit/forms/benchmark\\_usepa\\_multisector.pdf](http://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/docs/sbpermit/forms/benchmark_usepa_multisector.pdf), [http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf), and [http://www.waterboards.ca.gov/santaana/water\\_issues/programs/stormwater/docs/sbpermit/forms/benchmark\\_regionalboard.pdf](http://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/docs/sbpermit/forms/benchmark_regionalboard.pdf). (Last accessed on 2/28/12).

<sup>3</sup> Significant local rain events are reflected in the rain gauge data available at <http://cdec.water.ca.gov> and <http://wfwf.ncdc.noaa.gov/oa/ncdc.html>. (Last accessed on 2/28/12).

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stormwater from Your Facilities constitutes a separate violation of the Industrial Stormwater Permit and the CWA. These violations occurred on the dates in Attachments 2 and 3, as well as each day in Attachment 4 in which rainfall was greater than 0.1 inches. You are subject to civil penalties for violations of the Industrial Stormwater Permit and the CWA within the past five (5) years.

## 2. Discharges Impairing Receiving Waters

The Industrial Stormwater Permit's Discharge Prohibitions prohibit stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. *See* Industrial Stormwater Permit, Order Part A(2). The Industrial Stormwater Permit also prohibits stormwater discharges to surface or groundwater that adversely impact human health or the environment. *Id.* at Order Part C(1). Receiving Water Limitations of the Industrial Stormwater Permit prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS"). *Id.* at Order Part C(2). Applicable WQSs are set forth in the California Toxics Rule ("CTR")<sup>4</sup> and the Basin Plan and found in Attachment 5. Exceedances of WQSs are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan, *inter alia*, establishes the following Water Quality Standards for San Francisco Bay and its tributaries:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU.
- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms. Detrimental responses include, but are not limited to, decreased growth rate and decreased reproductive success of resident or indicator species. There shall be no acute toxicity in ambient waters. Acute toxicity is defined as a median of less than 90 percent survival, or less than 70 percent survival, 10 percent of the time, of test organisms in a 96-hour static or continuous flow test. There shall be no chronic toxicity in ambient waters. Chronic toxicity is a detrimental biological effect on growth rate,

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<sup>4</sup> The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31682.

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reproduction, fertilization success, larval development, population abundance, community composition, or any other relevant measure of the health of an organism, population, or community.

- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. See the Basin Plan's Table 3-3 for specific marine water quality objectives for toxic pollutants.<sup>5</sup>

Baykeeper alleges that Zanker's stormwater discharges have caused or contributed to exceedances of the Water Quality Standards set forth in the Basin Plan and California Toxics Rule. Attachments 2 and 3 to this Notice Letter compile the self-monitoring data reported by Zanker pursuant to the Industrial Stormwater Permit to the Regional Board, reflecting Zanker's sampling of actual stormwater discharges. Based on information available to Baykeeper, the sample results reflected in Attachments 2 and 3 are representative of the pollutant levels in the Facilities' discharges of stormwater. Thus, every instance when the Facilities have discharged stormwater, including instances when the Facilities have discharged stormwater that Zanker has not sampled, these stormwater discharges contained levels of pollutants comparable to the levels set forth in Attachments 2 and 3. Thus, You are exceeding Benchmarks on all days when stormwater is discharging from Your Facilities, in addition to those days when You have sampled stormwater.

Attachments 2 and 3 indicate that You routinely discharge stormwater to San Francisco Bay containing the following pollutants: pH, specific conductivity, TSS, oil and grease, COD, iron, copper, aluminum, magnesium, nickel, arsenic, and zinc. The levels of these pollutants in Your stormwater discharges have caused pollution, contamination, or nuisance in violation of the Discharge Prohibitions of the Industrial Stormwater Permit, and have adversely impacted the environment in violation of the Receiving Water Limitations of the Industrial Stormwater Permit. See Industrial Stormwater Permit, Order Parts A(2) and C(2). Moreover, the discharge of these pollutants has caused or contributed to San Francisco Bay's failure to attain one or more applicable Water Quality Standards in violation of the Receiving Water Limitations. *Id.* at Order Part C(2).

Baykeeper alleges that each day that Zanker discharged stormwater from the Facilities, Your stormwater contained levels of pollutants that exceeded one or more of the applicable Water Quality Standards in San Francisco Bay. Zanker discharged stormwater from the Facilities during at least every significant local rain event over 0.1 inches that have caused or contributed to Water Quality Standards not being met in San Francisco Bay in the last five years. Significant local rain events in the last five (5) years

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<sup>5</sup> Basin Plan, Table 3-3 is available at:

[http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/planningtmdls/basinplan/web/tab/tab\\_3-03.pdf](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/tab/tab_3-03.pdf). (Last accessed on 2/28/12).

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are compiled in Attachment 4 and otherwise available at <http://cdec.water.ca.gov> and <http://lwf.ncdc.noaa.gov/oa/ncdc.html> (Last accessed on 2/28/12).

Zanker's unlawful discharges from the Facilities have occurred and continue to occur presently during all significant rain events. Each and every day that stormwater discharges from Your Facilities is a violation of the Industrial Stormwater Permit and the CWA because You are failing to meet BAT and BCT. In addition, each discharge from Your Facilities that has caused or contributed, or causes or contributes to an exceedance of an applicable Water Quality Standard constitutes a separate violation of the Industrial Stormwater Permit and the CWA. You are subject to penalties for violations of the Industrial Stormwater Permit and the CWA within the past five (5) years.

**3. Failure to Develop and/or Implement an Adequate Storm Water Pollution Prevention Plan ("SWPPP"), as Required by the Industrial Stormwater Permit.**

The Industrial Stormwater Permit requires dischargers covered by the Industrial Stormwater Permit and commencing industrial activities before October 1, 1992 to develop and implement an adequate SWPPP by October 1, 1992. Industrial Stormwater Permit, Section A: Storm Water Pollution Prevention Plan Requirements, (1)(a). The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly, and in any case no later than August 1, 1997. *Id.* at Order Part E(2).

The SWPPP must include, among other requirements, the following: (a) identification of all the members of a stormwater pollution prevention team responsible for developing and implementing the SWPPP (*Id.* at Section A(3)); (b) a site map showing the stormwater conveyance system and areas of actual and potential pollutant contact and all areas of on-going industrial activity (*Id.* at Section A(4)); (c) a list of significant materials handled and stored at the site including quantities and frequencies (*Id.* at Section A(5)); (d) a description of all potential pollutant sources, industrial processes, material handling and storage, dust and particulate generating activities, significant spills and leaks, non-stormwater discharges, and potential soil erosion activity (*Id.* at Section A(6)); (e) an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in stormwater discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective (*Id.* at Sections A(7-8)); (f) specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, including BMPs already existing and BMPs to be adopted or implemented in the future (*Id.* at Section A(8)); (g) a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP as necessary after the evaluation has been completed (*Id.* at Section A(9)); and (h) revisions to the SWPPP within 90 days after a facility manager determines that the SWPPP is in violation of any requirements of the Industrial Stormwater Permit (*Id.* at Section A(10)). Facility operators are required to at all times properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which have been installed or used to achieve

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compliance with the conditions of the Industrial Stormwater Permit and the requirements of the SWPPP. *Id.* at Order Part C(5).

Zanker's SWPPPs do not include, and Zanker has not implemented, adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A(8) of the Industrial Stormwater Permit, as evidenced by open sources of pollutants on site, contaminant tracking around and off site, and the Facilities' discharges of stormwater contaminated with pollutants at levels attainable via application of BAT and BCT. Zanker's failure to prepare and/or implement adequate SWPPPs and/or to revise the SWPPPs in all the above respects constitutes violations of the Industrial Stormwater Permit, Section A(8) (SWPPP must specify BMPs necessary to attain BAT and BCT levels that are tailored to site conditions).

Accordingly, You have violated the Clean Water Act each and every day You have failed to develop and/or implement adequate SWPPPs meeting all of the requirements of Section A of the Industrial Stormwater Permit, and You will continue to be in violation every day that You fail to develop and/or implement adequate SWPPPs. You are subject to penalties for violations of the Industrial Stormwater Permit and the CWA occurring within the past five (5) years.

**4. Failure to Develop and Implement an Adequate Monitoring and Reporting Programs and Perform Annual Comprehensive Site Compliance Evaluations as Required by the Industrial Stormwater Permit.**

The Industrial Stormwater Permit requires facility operators to develop and to implement a Monitoring and Reporting Program ("MRP") by October 1, 1992 or when industrial activities begin at a facility. Industrial Stormwater Permit, Section B: Monitoring Program and Reporting Requirements, (1) and Order Part E(3). The Industrial Stormwater Permit requires that the MRP ensure that each facility's stormwater discharges comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial Stormwater Permit. *Id.* at Section B(2). Facility operators must ensure that their MRP practices reduce or prevent pollutants in stormwater and authorized non-stormwater discharges as well as evaluate and revise their practices to meet changing conditions at the facility. *Id.* This may include revising the SWPPP as required by Section A of the Industrial Stormwater Permit. The MRP must measure the effectiveness of BMPs used to prevent or reduce pollutants in stormwater and authorized non-stormwater discharges, and facility operators must revise the MRP whenever appropriate. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the facility's monitoring program will satisfy these objectives. *Id.* at Section B(10).

Pursuant to the monitoring and reporting requirements of the Industrial Stormwater Permit, facility operators must conduct and record visual observations of all drainage locations at the facility for authorized non-stormwater, unauthorized non-stormwater, and stormwater discharges throughout the year. *Id.* at Sections B(3), (4), and

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(8). Facility operators must also implement responsive measures to eliminate unauthorized non-stormwater discharges, to reduce or prevent pollutants from contacting non-stormwater discharges, and to reduce or prevent pollutants in stormwater discharges. *Id.* at Sections B(3), (4), and (7).

In addition to conducting visual observations, facility operators are required to collect and sample stormwater samples during the first hour of discharge from the first storm event of the wet season and at least one other storm event in the wet season. *Id.* at Section B(5)(a). Facility operators that do not collect samples from the first storm event of the wet season are required to explain in the Annual Report why the first storm event was not sampled. *Id.* If either sample collection or monthly visual observations of stormwater discharges occur more than one hour after discharge begins, facility operators must explain in the Annual Report why the sampling occurred more than one hour after discharges began. *Id.* at Section B(8)(b).

To achieve the objectives of the monitoring program, facility operators must comply with certain procedural requirements, including explaining monitoring methods; providing a description of the visual observation and sampling methods, location, and frequency; and identifying the analytical methods and corresponding method of detection limits used to detect pollutants in stormwater discharges. *Id.* at Section B(10). Facility operators must submit an Annual Report by July 1 each year to the Regional Water Board that includes a summary of visual observations and sampling results, laboratory reports, the Annual Comprehensive Site Compliance Evaluation Report, an explanation of why a facility did not implement any required activities, and records specified in Sections B(13)-(14).

Zanker has been operating the Facilities with inadequately developed and/or inadequately implemented MRPs, in violation of the substantive and procedural requirements set forth above. Your monitoring programs have not ensured that stormwater discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial Stormwater Permit as required by Section B(2). The monitoring programs have not resulted in practices at the Facilities that adequately reduce or prevent pollutants in stormwater as required by Order Part B(2). Zanker's MRPs have not effectively identified or responded to compliance problems at the Facilities or resulted in effective revision of BMPs in use or the Facilities' SWPPPs to address such ongoing problems as required by Section B(2) of the Industrial Stormwater Permit.

As a result of Your failure to adequately develop and/or implement adequate MRPs at the Facilities, You have been in daily and continuous violation of the Industrial Stormwater Permit and the CWA on each and every day for the last five years. These violations are ongoing. You will continue to be in violation of the monitoring and reporting requirements every day You fail to adequately develop and/or implement effective MRPs at the Facilities. You are subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last five (5) years.

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#### **5. Discharges Without Permit Coverage.**

Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a), prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES permit issued pursuant to section 402 of the Clean Water Act. *See* 33 U.S.C. §§ 1311(a), 1342. In turn, You have sought coverage under the Industrial Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater Permit “must be either eliminated or permitted by a separate NPDES permit.” Industrial Stormwater Permit, Order Part A(1). Because You have not obtained coverage under any separate NPDES permit, and have not eliminated discharges not permitted by the Industrial Stormwater Permit, each and every discharge from Your Facilities described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA permit coverage in violation of section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

#### **IV. PERSONS RESPONSIBLE FOR THE VIOLATIONS**

Zanker Road Resource Management Ltd. is the person responsible for the violations at the Facilities described above.

#### **V. NAME AND ADDRESS OF NOTICING PARTY**

Our name, address, and telephone number is as follows:

San Francisco Baykeeper  
785 Market Street, Suite 850  
San Francisco, CA 94103  
(415) 856-0444

#### **VI. COUNSEL**

Baykeeper is represented by the following counsel in this matter, to whom all communications should be directed:

Jason Flanders  
Andrea Kopecky  
San Francisco Baykeeper  
785 Market Street, Suite 850  
San Francisco, CA 94103  
(415) 856-0444

Jason Flanders: (415) 856-0444 x106, [jason@baykeeper.org](mailto:jason@baykeeper.org)  
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Daniel Cooper

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Drevet Hunt  
Lawyers for Clean Water  
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San Francisco, CA 94129  
(415) 440-6520

Daniel Cooper: [daniel@lawyersforcleanwater.org](mailto:daniel@lawyersforcleanwater.org)  
Drevet Hunt: [drev@lawyersforcleanwater.org](mailto:drev@lawyersforcleanwater.org)

## VII. REMEDIES

Baykeeper will seek declaratory and injunctive relief preventing further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. §1365(a) and such other relief as permitted by law. In addition, Baykeeper will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d) and 40 C.F.R. section 19.4, against You in this action. The CWA imposes civil penalty liability of up to \$32,500 per day per CWA violation for violations occurring from March 15, 2004 through January 12, 2009, and \$37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4 (2009). Baykeeper will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

Baykeeper intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against You for the above-referenced violations. During the 60-day notice period, we are willing to discuss effective remedies for the violations noted in this letter. We suggest that You contact us within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court even if discussions are continuing when the notice period ends.

Sincerely,

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Andrea Kopecky  
Associate Attorney  
San Francisco Baykeeper

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Cc:

<p>Lisa Jackson Administrator US EPA, Ariel Rios Building 1200 Pennsylvania Avenue, N.W. Mail Code: 1101A Washington, D.C. 20460</p>	<p>Eric H. Holder, Jr. U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530-0001</p>
<p>Jared Blumenfeld Regional Administrator U.S. EPA - Region 9 75 Hawthorne Street San Francisco, California 94105</p>	<p>Thomas Howard Executive Director State Water Resources Control Board 1001 I Street Sacramento, CA 95814</p>
<p>Bruce Wolfe Executive Officer Regional Water Quality Control Board San Francisco Bay Region 1515 Clay Street, Suite 1400 Oakland, CA 94612</p>	

**Attachment 1: EPA Benchmarks**

Parameter	Units	Benchmark value
Biochemical Oxygen Demand	mg/L	30
Chemical Oxygen Demand (COD)	mg/L	120
Total Suspended Solids (TSS)	mg/L	100
Oil and Grease	mg/L	15
Nitrate + Nitrite Nitrogen	mg/L	0.68
Total Phosphorus	mg/L	2
pH	SU - low	6
pH	SU - high	9
Acrylonitrile	mg/L	7.55
Aluminum Total	mg/L	0.75
Ammonia Total (as N)	mg/L	19
Antimony, Total	mg/L	0.636
Arsenic Total	mg/L	0.16854
Benzene	mg/L	0.01
Beryllium, Total	mg/L	0.13
Butylbenzyl Phthalate	mg/L	3
Chloride	mg/L	860
Copper Total	mg/L	0.0636
Dimethyl Phthalate	mg/L	1
Ethylbenzene	mg/L	3.1
Fluoranthene	mg/L	0.042
Fluoride	mg/L	1.8
Iron Total	mg/L	1
Lead Total	mg/L	0.0816
Manganese	mg/L	1
Mercury Total	mg/L	0.0024
Nickel Total	mg/L	1.417
PCB-1016	mg/L	0.000127
PCB-1221	mg/L	0.1
PCB-1232	mg/L	0.000318
PCB-1242	mg/L	0.0002
PCB-1248	mg/L	0.002544
PCB-1254	mg/L	0.1
PCB-1260	mg/L	0.000477
Phenols, Total	mg/L	1
Pyrene	mg/L	0.01
Selenium Total	mg/L	0.2385
Silver Total	mg/L	0.0318

Toluene	mg/L	10
Trichloroethylene	mg/L	0.0027
Zinc Total	mg/L	0.117
Cyanide Total (as CN)	mg/L	0.0636
Magnesium Total	mg/L	0.0636
Electrical Conductivity @ 25 Deg. C	umhos/cm	200

**Attachment 2: Table of Violations for Zanker Road Landfill**

Table containing each stormwater sample result provided by Zanker in which samples exceed Water Quality Standards (yellow), or EPA Benchmarks (green), or both (green). Samples listed are only from the last 5 years. The EPA Benchmarks and Water Quality Standards are listed at the end of the table. Samples collected by Zanker at Zanker Landfill, located at 705 Los Esteros Road, San Jose, California.

No.	Sample Location	Date	Parameter		Value	Units	Wet Season
1	SW-1	3/18/2011	pH	=	8.07	SU	2010 - 2011
2	SW-1	3/18/2011	Total Suspended Solids (TSS)	=	540	mg/L	2010 - 2011
3	SW-1	3/18/2011	Electrical Conductivity @ 25 Deg. C	=	2400	umhos/cm	2010 - 2011
4	SW-1	3/18/2011	Chemical Oxygen Demand (COD)	=	160	mg/L	2010 - 2011
5	SW-1	3/18/2011	Copper Total	=	0.044	mg/L	2010 - 2011
6	SW-1	3/18/2011	Zinc Total	=	0.18	mg/L	2010 - 2011
7	SW-1	3/18/2011	Iron Total	=	15	mg/L	2010 - 2011
8	SW-2	3/18/2011	pH	=	8.52	SU	2010 - 2011
9	SW-2	3/18/2011	Total Suspended Solids (TSS)	=	880	mg/L	2010 - 2011
10	SW-2	3/18/2011	Electrical Conductivity @ 25 Deg. C	=	1100	umhos/cm	2010 - 2011
11	SW-2	3/18/2011	Chemical Oxygen Demand (COD)	=	130	mg/L	2010 - 2011
12	SW-2	3/18/2011	Copper Total	=	0.067	mg/L	2010 - 2011
13	SW-2	3/18/2011	Zinc Total	=	0.28	mg/L	2010 - 2011
14	SW-2	3/18/2011	Iron Total	=	33	mg/L	2010 - 2011
15	SW-3	3/18/2011	pH	=	8.12	SU	2010 - 2011
16	SW-3	3/18/2011	Electrical Conductivity @ 25 Deg. C	=	610	umhos/cm	2010 - 2011
17	SW-3	3/18/2011	Iron Total	=	6.7	mg/L	2010 - 2011
18	SW-4	3/18/2011	pH	=	8.45	SU	2010 - 2011
19	SW-4	3/18/2011	Total Suspended Solids (TSS)	=	580	mg/L	2010 - 2011
20	SW-4	3/18/2011	Electrical Conductivity @ 25 Deg. C	=	1700	umhos/cm	2010 - 2011
21	SW-4	3/18/2011	Chemical Oxygen Demand (COD)	=	150	mg/L	2010 - 2011
22	SW-4	3/18/2011	Copper Total	=	0.059	mg/L	2010 - 2011
23	SW-4	3/18/2011	Zinc Total	=	0.26	mg/L	2010 - 2011
24	SW-4	3/18/2011	Iron Total	=	21	mg/L	2010 - 2011
25	SW-6	3/18/2011	pH	=	8.16	SU	2010 - 2011
26	SW-6	3/18/2011	Total Suspended Solids (TSS)	=	380	mg/L	2010 - 2011
27	SW-6	3/18/2011	Electrical Conductivity @ 25 Deg. C	=	2000	umhos/cm	2010 - 2011
28	SW-6	3/18/2011	Chemical Oxygen Demand (COD)	=	170	mg/L	2010 - 2011
29	SW-6	3/18/2011	Copper Total	=	0.038	mg/L	2010 - 2011
30	SW-6	3/18/2011	Zinc Total	=	0.15	mg/L	2010 - 2011
31	SW-6	3/18/2011	Iron Total	=	21	mg/L	2010 - 2011
32	SW-1	2/17/2011	pH	=	8.11	SU	2010 - 2011
33	SW-1	2/17/2011	Electrical Conductivity @ 25 Deg. C	=	3700	umhos/cm	2010 - 2011
34	SW-1	2/17/2011	Chemical Oxygen Demand (COD)	=	200	mg/L	2010 - 2011
35	SW-1	2/17/2011	Copper Total	=	0.033	mg/L	2010 - 2011

36	SW-1	2/17/2011	Iron Total	=	1.4	mg/L	2010 - 2011
37	SW-2	2/17/2011	pH	=	8.12	SU	2010 - 2011
38	SW-2	2/17/2011	Total Suspended Solids (TSS)	=	380	mg/L	2010 - 2011
39	SW-2	2/17/2011	Electrical Conductivity @ 25 Deg. C	=	2100	umhos/cm	2010 - 2011
40	SW-2	2/17/2011	Chemical Oxygen Demand (COD)	=	130	mg/L	2010 - 2011
41	SW-2	2/17/2011	Copper Total	=	0.042	mg/L	2010 - 2011
42	SW-2	2/17/2011	Zinc Total	=	0.16	mg/L	2010 - 2011
43	SW-2	2/17/2011	Iron Total	=	14	mg/L	2010 - 2011
44	SW-3	2/17/2011	pH	=	7.92	SU	2010 - 2011
45	SW-3	2/17/2011	Electrical Conductivity @ 25 Deg. C	=	2100	umhos/cm	2010 - 2011
46	SW-3	2/17/2011	Iron Total	=	1.4	mg/L	2010 - 2011
47	SW-4	2/17/2011	pH	=	8.05	SU	2010 - 2011
48	SW-4	2/17/2011	Total Suspended Solids (TSS)	=	220	mg/L	2010 - 2011
49	SW-4	2/17/2011	Electrical Conductivity @ 25 Deg. C	=	3200	umhos/cm	2010 - 2011
50	SW-4	2/17/2011	Chemical Oxygen Demand (COD)	=	140	mg/L	2010 - 2011
51	SW-4	2/17/2011	Copper Total	=	0.04	mg/L	2010 - 2011
52	SW-4	2/17/2011	Zinc Total	=	0.14	mg/L	2010 - 2011
53	SW-4	2/17/2011	Iron Total	=	11	mg/L	2010 - 2011
54	SW-6	2/17/2011	pH	=	8.03	SU	2010 - 2011
55	SW-6	2/17/2011	Total Suspended Solids (TSS)	=	690	mg/L	2010 - 2011
56	SW-6	2/17/2011	Electrical Conductivity @ 25 Deg. C	=	4300	umhos/cm	2010 - 2011
57	SW-6	2/17/2011	Oil and Grease	=	15	mg/L	2010 - 2011
58	SW-6	2/17/2011	Chemical Oxygen Demand (COD)	=	280	mg/L	2010 - 2011
59	SW-6	2/17/2011	Copper Total	=	0.08	mg/L	2010 - 2011
60	SW-6	2/17/2011	Zinc Total	=	0.24	mg/L	2010 - 2011
61	SW-6	2/17/2011	Iron Total	=	19	mg/L	2010 - 2011
62	SW-6	2/23/2010	pH	=	8	SU	2009 - 2010
63	SW-6	2/23/2010	Total Suspended Solids (TSS)	=	260	mg/L	2009 - 2010
64	SW-6	2/23/2010	Electrical Conductivity @ 25 Deg. C	=	3400	umhos/cm	2009 - 2010
65	SW-6	2/23/2010	Chemical Oxygen Demand (COD)	=	250	mg/L	2009 - 2010
66	SW-6	2/23/2010	Copper Total	=	0.038	mg/L	2009 - 2010
67	SW-6	2/23/2010	Zinc Total	=	0.1	mg/L	2009 - 2010
68	SW-6	2/23/2010	Iron Total	=	8.1	mg/L	2009 - 2010
69	SW-2	2/23/2010	pH	=	7.91	SU	2009 - 2010
70	SW-2	2/23/2010	Total Suspended Solids (TSS)	=	370	mg/L	2009 - 2010
71	SW-2	2/23/2010	Electrical Conductivity @ 25 Deg. C	=	2900	umhos/cm	2009 - 2010
72	SW-2	2/23/2010	Chemical Oxygen Demand (COD)	=	150	mg/L	2009 - 2010
73	SW-2	2/23/2010	Copper Total	=	0.032	mg/L	2009 - 2010
74	SW-2	2/23/2010	Zinc Total	=	0.095	mg/L	2009 - 2010
75	SW-2	2/23/2010	Iron Total	=	9.7	mg/L	2009 - 2010
76	SW-1	2/23/2010	pH	=	7.96	SU	2009 - 2010
77	SW-1	2/23/2010	Total Suspended Solids (TSS)	=	920	mg/L	2009 - 2010

78	SW-1	2/23/2010	Electrical Conductivity @ 25 Deg. C	=	3000	umhos/cm	2009 - 2010
79	SW-1	2/23/2010	Chemical Oxygen Demand (COD)	=	260	mg/L	2009 - 2010
80	SW-1	2/23/2010	Copper Total	=	0.082	mg/L	2009 - 2010
81	SW-1	2/23/2010	Lead Total	=	0.087	mg/L	2009 - 2010
82	SW-1	2/23/2010	Zinc Total	=	0.37	mg/L	2009 - 2010
83	SW-1	2/23/2010	Iron Total	=	27	mg/L	2009 - 2010
84	SW-1	2/23/2010	Nickel Total	=	0.1	mg/L	2009 - 2010
85	SW-4	2/23/2010	pH	=	8.28	SU	2009 - 2010
86	SW-4	2/23/2010	Total Suspended Solids (TSS)	=	150	mg/L	2009 - 2010
87	SW-4	2/23/2010	Electrical Conductivity @ 25 Deg. C	=	3200	umhos/cm	2009 - 2010
88	SW-4	2/23/2010	Chemical Oxygen Demand (COD)	=	200	mg/L	2009 - 2010
89	SW-4	2/23/2010	Copper Total	=	0.037	mg/L	2009 - 2010
90	SW-4	2/23/2010	Iron Total	=	5.9	mg/L	2009 - 2010
91	SW-1	1/18/2010	pH	=	8.26	SU	2009 - 2010
92	SW-1	1/18/2010	Electrical Conductivity @ 25 Deg. C	=	2300	umhos/cm	2009 - 2010
93	SW-1	1/18/2010	Chemical Oxygen Demand (COD)	=	130	mg/L	2009 - 2010
94	SW-1	1/18/2010	Copper Total	=	0.026	mg/L	2009 - 2010
95	SW-1	1/18/2010	Zinc Total	=	0.11	mg/L	2009 - 2010
96	SW-1	1/18/2010	Iron Total	=	5	mg/L	2009 - 2010
97	SW-1	1/18/2010	Magnesium Total	=	19	mg/L	2009 - 2010
98	SW-2	1/18/2010	pH	=	8.14	SU	2009 - 2010
99	SW-2	1/18/2010	Total Suspended Solids (TSS)	=	860	mg/L	2009 - 2010
100	SW-2	1/18/2010	Electrical Conductivity @ 25 Deg. C	=	1500	umhos/cm	2009 - 2010
101	SW-2	1/18/2010	Chemical Oxygen Demand (COD)	=	230	mg/L	2009 - 2010
102	SW-2	1/18/2010	Copper Total	=	0.068	mg/L	2009 - 2010
103	SW-2	1/18/2010	Zinc Total	=	0.28	mg/L	2009 - 2010
104	SW-2	1/18/2010	Iron Total	=	18	mg/L	2009 - 2010
105	SW-2	1/18/2010	Magnesium Total	=	16	mg/L	2009 - 2010
106	SW-3	1/18/2010	pH	=	7.55	SU	2009 - 2010
107	SW-3	1/18/2010	Total Suspended Solids (TSS)	=	170	mg/L	2009 - 2010
108	SW-3	1/18/2010	Electrical Conductivity @ 25 Deg. C	=	1800	umhos/cm	2009 - 2010
109	SW-3	1/18/2010	Chemical Oxygen Demand (COD)	=	140	mg/L	2009 - 2010
110	SW-3	1/18/2010	Copper Total	=	0.021	mg/L	2009 - 2010
111	SW-3	1/18/2010	Iron Total	=	5.6	mg/L	2009 - 2010
112	SW-3	1/18/2010	Magnesium Total	=	34	mg/L	2009 - 2010
113	SW-4	1/18/2010	pH	=	8.2	SU	2009 - 2010
114	SW-4	1/18/2010	Total Suspended Solids (TSS)	=	150	mg/L	2009 - 2010
115	SW-4	1/18/2010	Electrical Conductivity @ 25 Deg. C	=	2400	umhos/cm	2009 - 2010
116	SW-4	1/18/2010	Chemical Oxygen Demand (COD)	=	130	mg/L	2009 - 2010
117	SW-4	1/18/2010	Copper Total	=	0.028	mg/L	2009 - 2010
118	SW-4	1/18/2010	Zinc Total	=	0.098	mg/L	2009 - 2010
119	SW-4	1/18/2010	Iron Total	=	6.7	mg/L	2009 - 2010

120	SW-4	1/18/2010	Magnesium Total	=	22	mg/L	2009 - 2010
121	SW-5	1/18/2010	pH	=	7.99	SU	2009 - 2010
122	SW-6	1/18/2010	pH	=	8.3	SU	2009 - 2010
123	SW-6	1/18/2010	Total Suspended Solids (TSS)	=	100	mg/L	2009 - 2010
124	SW-6	1/18/2010	Electrical Conductivity @ 25 Deg. C	=	2500	umhos/cm	2009 - 2010
125	SW-6	1/18/2010	Chemical Oxygen Demand (COD)	=	200	mg/L	2009 - 2010
126	SW-6	1/18/2010	Copper Total	=	0.033	mg/L	2010 - 2010
127	SW-6	1/18/2010	Zinc Total	=	0.11	mg/L	2012 - 2010
128	SW-6	1/18/2010	Iron Total	=	8.3	mg/L	2013 - 2010
129	SW-6	1/18/2010	Magnesium Total	=	30	mg/L	2015 - 2010
130	SW-5	1/20/2010	Electrical Conductivity @ 25 Deg. C	=	1900	umhos/cm	2009 - 2010
131	SW-5	1/20/2010	Chemical Oxygen Demand (COD)	=	280	mg/L	2009 - 2010
132	SW-5	1/20/2010	Copper Total	=	0.037	mg/L	2009 - 2010
133	SW-5	1/20/2010	Zinc Total	=	0.094	mg/L	2009 - 2010
134	SW-5	1/20/2010	Iron Total	=	6.1	mg/L	2009 - 2010
135	SW-5	1/20/2010	Magnesium Total	=	21	mg/L	2009 - 2010
136	SW-1	1/22/2009	pH	=	8.02	SU	2008 - 2009
137	SW-1	1/22/2009	Electrical Conductivity @ 25 Deg. C	=	3200	umhos/cm	2008 - 2009
138	SW-1	1/22/2009	Magnesium Total	=	41	mg/L	2008 - 2009
139	SW-1	1/22/2009	Chemical Oxygen Demand (COD)	=	200	mg/L	2008 - 2009
140	SW-4	1/22/2009	Zinc Total	=	0.15	mg/L	2008 - 2009
141	SW-4	1/22/2009	Magnesium Total	=	32	mg/L	2008 - 2009
142	SW-4	1/22/2009	Iron Total	=	5	mg/L	2008 - 2009
143	SW-4	1/22/2009	Chemical Oxygen Demand (COD)	=	120	mg/L	2008 - 2009
144	SW-4	1/22/2009	pH	=	8.37	SU	2008 - 2009
145	SW-4	1/22/2009	Total Suspended Solids (TSS)	=	500	mg/L	2008 - 2009
146	SW-4	1/22/2009	Electrical Conductivity @ 25 Deg. C	=	2900	umhos/cm	2008 - 2009
147	SW-4	11/26/2008	pH	=	7.88	SU	2008 - 2009
148	SW-4	11/26/2008	Total Suspended Solids (TSS)	=	220	mg/L	2008 - 2009
149	SW-4	11/26/2008	Electrical Conductivity @ 25 Deg. C	=	3400	umhos/cm	2008 - 2009
150	SW-4	11/26/2008	Zinc Total	=	0.15	mg/L	2008 - 2009
151	SW-4	11/26/2008	Magnesium Total	=	42	mg/L	2008 - 2009
152	SW-4	11/26/2008	Iron Total	=	3.6	mg/L	2008 - 2009
153	SW-4	11/26/2008	Chemical Oxygen Demand (COD)	=	270	mg/L	2008 - 2009
154	SW-1	11/26/2008	pH	=	8.41	SU	2008 - 2009
155	SW-1	11/26/2008	Total Suspended Solids (TSS)	=	1000	mg/L	2008 - 2009
156	SW-1	11/26/2008	Electrical Conductivity @ 25 Deg. C	=	3700	umhos/cm	2008 - 2009
157	SW-1	11/26/2008	Zinc Total	=	0.3	mg/L	2008 - 2009
158	SW-1	11/26/2008	Magnesium Total	=	30	mg/L	2008 - 2009
159	SW-1	11/26/2008	Iron Total	=	10	mg/L	2008 - 2009
160	SW-1	11/26/2008	Chemical Oxygen Demand (COD)	=	300	mg/L	2008 - 2009
161	SW-2	11/26/2008	pH	=	8.22	SU	2008 - 2009

162	SW-2	11/26/2008	Total Suspended Solids (TSS)	=	1100	mg/L	2008 - 2009
163	SW-2	11/26/2008	Electrical Conductivity @ 25 Deg. C	=	4000	umhos/cm	2008 - 2009
164	SW-2	11/26/2008	Zinc Total	=	0.38	mg/L	2008 - 2009
165	SW-2	11/26/2008	Magnesium Total	=	35	mg/L	2008 - 2009
166	SW-2	11/26/2008	Iron Total	=	12	mg/L	2008 - 2009
167	SW-2	11/26/2008	Chemical Oxygen Demand (COD)	=	360	mg/L	2008 - 2009
168	SW-3	11/26/2008	pH	=	7.77	SU	2008 - 2009
169	SW-3	11/26/2008	Total Suspended Solids (TSS)	=	200	mg/L	2008 - 2009
170	SW-3	11/26/2008	Electrical Conductivity @ 25 Deg. C	=	1700	umhos/cm	2008 - 2009
171	SW-3	11/26/2008	Zinc Total	=	0.13	mg/L	2008 - 2009
172	SW-3	11/26/2008	Magnesium Total	=	23	mg/L	2008 - 2009
173	SW-3	11/26/2008	Iron Total	=	4.1	mg/L	2008 - 2009
174	SW-3	11/26/2008	Chemical Oxygen Demand (COD)	=	170	mg/L	2008 - 2009
175	SW-3	12/18/2007	pH	=	7.92	SU	2007 - 2008
176	SW-3	12/18/2007	Total Suspended Solids (TSS)	=	100	mg/L	2007 - 2008
177	SW-3	12/18/2007	Electrical Conductivity @ 25 Deg. C	=	2000	umhos/cm	2007 - 2008
178	SW-3	12/18/2007	Magnesium Total	=	27	mg/L	2007 - 2008
179	SW-3	12/18/2007	Iron Total	=	1.3	mg/L	2007 - 2008
180	SW-3	12/18/2007	Chemical Oxygen Demand (COD)	=	130	mg/L	2007 - 2008
181	SW-2	12/18/2007	pH	=	9.55	SU	2007 - 2008
182	SW-2	12/18/2007	Total Suspended Solids (TSS)	=	280	mg/L	2007 - 2008
183	SW-2	12/18/2007	Electrical Conductivity @ 25 Deg. C	=	3900	umhos/cm	2007 - 2008
184	SW-2	12/18/2007	Zinc Total	=	0.12	mg/L	2007 - 2008
185	SW-2	12/18/2007	Magnesium Total	=	50	mg/L	2007 - 2008
186	SW-2	12/18/2007	Iron Total	=	4	mg/L	2007 - 2008
187	SW-2	12/18/2007	Chemical Oxygen Demand (COD)	=	540	mg/L	2007 - 2008
188	SW-1	12/18/2007	pH	=	8.36	SU	2007 - 2008
189	SW-1	12/18/2007	Total Suspended Solids (TSS)	=	210	mg/L	2007 - 2008
190	SW-1	12/18/2007	Electrical Conductivity @ 25 Deg. C	=	3300	umhos/cm	2007 - 2008
191	SW-1	12/18/2007	Zinc Total	=	0.15	mg/L	2007 - 2008
192	SW-1	12/18/2007	Magnesium Total	=	34	mg/L	2007 - 2008
193	SW-1	12/18/2007	Iron Total	=	2.5	mg/L	2007 - 2008
194	SW-1	12/18/2007	Chemical Oxygen Demand (COD)	=	250	mg/L	2007 - 2008
195	SW-4	12/18/2007	pH	=	8.49	SU	2007 - 2008
196	SW-4	12/18/2007	Total Suspended Solids (TSS)	=	560	mg/L	2007 - 2008
197	SW-4	12/18/2007	Electrical Conductivity @ 25 Deg. C	=	370	umhos/cm	2007 - 2008
198	SW-4	12/18/2007	Zinc Total	=	0.4	mg/L	2007 - 2008
199	SW-4	12/18/2007	Magnesium Total	=	41	mg/L	2007 - 2008
200	SW-4	12/18/2007	Iron Total	=	5.4	mg/L	2007 - 2008
201	SW-4	12/18/2007	Chemical Oxygen Demand (COD)	=	510	mg/L	2007 - 2008
202	SW-4	12/18/2007	pH	=	8.49	SU	2007 - 2008
203	SW-4	12/18/2007	Total Suspended Solids (TSS)	=	560	mg/L	2007 - 2008

204	SW-4	12/18/2007	Electrical Conductivity @ 25 Deg. C	=	370	umhos/cm	2007 - 2008
205	SW-4	12/18/2007	Zinc Total	=	0.4	mg/L	2007 - 2008
206	SW-4	12/18/2007	Magnesium Total	=	41	mg/L	2007 - 2008
207	SW-4	12/18/2007	Iron Total	=	5.4	mg/L	2007 - 2008
208	SW-4	12/18/2007	Chemical Oxygen Demand (COD)	=	510	mg/L	2007 - 2008

Criteria - EPA Benchmarks			
Parameter	Units	Benchmark Value	Source
Chemical Oxygen Demand (COD)	mg/L	120	MSGP(b)
Total Suspended Solids (TSS)	mg/L	100	MSGP(a)
Oil and Grease	mg/L	15	MSGP(b)
Nitrate + Nitrite Nitrogen	mg/L	0.68	MSGP(b)
pH	SU - low	6	MSGP(b)
pH	SU - high	9	MSGP(b)
Aluminum Total	mg/L	0.75	MSGP(a)
Ammonia Total (as N)	mg/L	19	MSGP(b)
Arsenic Total	mg/L	0.16854	MSGP(b)
Benzene	mg/L	0.01	MSGP(b)
Copper Total	mg/L	0.0636	MSGP(b)*
Iron Total	mg/L	1	MSGP(b)
Lead Total	mg/L	0.0816	MSGP(b)*
Toluene	mg/L	10	MSGP(b)
Mercury Total	mg/L	0.0024	MSGP(b)
Nickel Total	mg/L	1.417	MSGP(b)*
Phenols, Total	mg/L	1	MSGP(b)
Pyrene	mg/L	0.01	MSGP(b)
Selenium Total	mg/L	0.2385	MSGP(b)
Silver Total	mg/L	0.0318	MSGP(b)*
Cadmium Total	mg/L	0.0159	MSGP(b)*
Trichloroethylene	mg/L	0.0027	MSGP(b)
Zinc Total	mg/L	0.117	MSGP(b)*
Cyanide Total (as CN)	mg/L	0.0636	MSGP(b)
Magnesium Total	mg/L	0.0636	MSGP(b)
Electrical Conductivity @ 25 Deg. C	umhos/cm	200	

MSGP (a) = 2008 sector-specific numeric limits

MSGP (b) = 2000 benchmarks

\*Hardness dependent in freshwater

<b>Criteria - Basin Plan</b>			
<b>Parameter</b>	<b>Units</b>	<b>Benchmark Value</b>	<b>Source</b>
Arsenic Total	mg/L	0.069	BP
Cadium, Total	mg/L	0.042	BP
Chromium VI	mg/L	1.1	BP
Copper Total	mg/L	0.0108	BP - SSOs
Cyanide Total (as CN)	mg/L	0.0094	BP - SSOs
Lead Total	mg/L	0.22	BP
Mercury Total	mg/L	0.0021	BP
Selenium Total	mg/L	0.29	BP
Silver Total	mg/L	0.0019	BP
Zinc Total	mg/L	0.09	BP
PAHs	mg/L	0.015	BP
Nickel Total	mg/L	0.0624	BP - SSOs

BP = Basin Plan  
SSO = Site Specific  
Objectives

### Attachment 3: Table of Violations for Zanker's Processing Facility

Table containing each stormwater sample result provided by Zanker in which samples exceed Water Quality Standards (yellow), or EPA Benchmarks (green), or both (green). Samples listed are only from the last 5 years. The EPA Benchmarks and Water Quality Standards are listed at the end of the table. Samples collected by Zanker at Zanker's facility located at 675 Los Esteros Road, San Jose, California.

No.	Location	Date	Parameter		Value	Units	Wet Season
1	SW-3	3/18/2011	pH	=	8.14	SU	2010 - 2011
2	SW-3	3/18/2011	Total Suspended Solids (TSS)	=	430	mg/L	2010 - 2011
3	SW-3	3/18/2011	Electrical Conductivity @ 25 Deg. C	=	1900	umhos/cm	2010 - 2011
4	SW-3	3/18/2011	Chemical Oxygen Demand (COD)	=	210	mg/L	2010 - 2011
5	SW-3	3/18/2011	Copper Total	=	0.073	mg/L	2010 - 2011
6	SW-3	3/18/2011	Lead Total	=	0.12	mg/L	2010 - 2011
7	SW-3	3/18/2011	Zinc Total	=	0.44	mg/L	2010 - 2011
8	SW-3	3/18/2011	Iron Total	=	20	mg/L	2010 - 2011
9	SW-3	2/17/2011	pH	=	7.81	SU	2010 - 2011
10	SW-3	2/17/2011	Total Suspended Solids (TSS)	=	190	mg/L	2010 - 2011
11	SW-3	2/17/2011	Electrical Conductivity @ 25 Deg. C	=	2200	umhos/cm	2010 - 2011
12	SW-3	2/17/2011	Copper Total	=	0.033	mg/L	2010 - 2011
13	SW-3	2/17/2011	Zinc Total	=	0.17	mg/L	2010 - 2011
14	SW-3	2/17/2011	Magnesium Total	=	20	mg/L	2010 - 2011
15	SW-3	2/17/2011	Iron Total	=	6.8	mg/L	2010 - 2011
16	SW-3	2/23/2010	pH	=	8.14	SU	2009 - 2010
17	SW-3	2/23/2010	Electrical Conductivity @ 25 Deg. C	=	2600	umhos/cm	2009 - 2010
18	SW-3	2/23/2010	Chemical Oxygen Demand (COD)	=	160	mg/L	2009 - 2010
19	SW-3	2/23/2010	Copper Total	=	0.057	mg/L	2009 - 2010
20	SW-3	2/23/2010	Zinc Total	=	0.18	mg/L	2009 - 2010
21	SW-3	2/23/2010	Iron Total	=	9.1	mg/L	2009 - 2010
22	SW-3	1/18/2010	Copper Total	=	0.19	mg/L	2009 - 2010
23	SW-3	1/18/2010	Lead Total	=	0.38	mg/L	2009 - 2010
24	SW-3	1/18/2010	Zinc Total	=	1.2	mg/L	2009 - 2010
25	SW-3	1/18/2010	Iron Total	=	55	mg/L	2009 - 2010
26	SW-1	1/20/2010	pH	=	7.4	SU	2009 - 2010
27	SW-1	1/20/2010	Electrical Conductivity @ 25 Deg. C	=	2300	umhos/cm	2009 - 2010
28	SW-1	1/20/2010	Chemical Oxygen Demand (COD)	=	240	mg/L	2009 - 2010
29	SW-1	1/20/2010	Copper Total	=	0.048	mg/L	2009 - 2010
30	SW-1	1/20/2010	Zinc Total	=	0.3	mg/L	2009 - 2010
31	SW-1	1/20/2010	Iron Total	=	9.1	mg/L	2009 - 2010
32	SW-2	1/20/2010	pH	=	7.74	SU	2009 - 2010
33	SW-2	1/20/2010	Electrical Conductivity @ 25 Deg. C	=	2700	umhos/cm	2009 - 2010
34	SW-2	1/20/2010	Chemical Oxygen Demand (COD)	=	170	mg/L	2009 - 2010

35	SW-2	1/20/2010	Copper Total	=	0.037	mg/L	2009 - 2010
36	SW-2	1/20/2010	Zinc Total	=	0.15	mg/L	2009 - 2010
37	SW-2	1/20/2010	Iron Total	=	4.5	mg/L	2009 - 2010
38	SW-3	1/20/2010	pH	=	8.1	SU	2009 - 2010
39	SW-3	1/20/2010	Total Suspended Solids (TSS)	=	1600	mg/L	2009 - 2010
40	SW-3	1/20/2010	Electrical Conductivity @ 25 Deg. C	=	1700	umhos/cm	2009 - 2010
41	SW-3	1/20/2010	Chemical Oxygen Demand (COD)	=	170	mg/L	2009 - 2010
42	SW-2	2/16/2009	pH	=	7.5	SU	2008 - 2009
43	SW-2	2/16/2009	Electrical Conductivity @ 25 Deg. C	=	2300	umhos/cm	2008 - 2009
44	SW-2	2/16/2009	Zinc Total	=	0.18	mg/L	2008 - 2009
45	SW-2	2/16/2009	Iron Total	=	2	mg/L	2008 - 2009
46	SW-2	2/16/2009	Chemical Oxygen Demand (COD)	=	220	mg/L	2008 - 2009
47	SW-1	2/16/2009	pH	=	7.5	SU	2008 - 2009
48	SW-1	2/16/2009	Electrical Conductivity @ 25 Deg. C	=	2600	umhos/cm	2008 - 2009
49	SW-1	2/16/2009	Zinc Total	=	0.46	mg/L	2008 - 2009
50	SW-1	2/16/2009	Iron Total	=	3.7	mg/L	2008 - 2009
51	SW-1	2/16/2009	Chemical Oxygen Demand (COD)	=	320	mg/L	2008 - 2009
52	SW - 3	1/22/2009	pH	=	7.48	SU	2008 - 2009
53	SW - 3	1/22/2009	Electrical Conductivity @ 25 Deg. C	=	2000	umhos/cm	2008 - 2009
54	SW - 3	1/22/2009	Aluminum Total	=	0.2	mg/L	2008 - 2009
55	SW - 3	11/26/2008	pH	=	8	SU	2008 - 2009
56	SW - 3	11/26/2008	Total Suspended Solids (TSS)	=	160	mg/L	2008 - 2009
57	SW - 3	11/26/2008	Electrical Conductivity @ 25 Deg. C	=	3000	umhos/cm	2008 - 2009
58	SW - 3	11/26/2008	Iron Total	=	2.5	mg/L	2008 - 2009
59	SW - 3	11/26/2008	Chemical Oxygen Demand (COD)	=	160	mg/L	2008 - 2009
60	SW - 3	12/28/2007	pH	=	7.66	SU	2007 - 2008
61	SW - 3	12/28/2007	Electrical Conductivity @ 25 Deg. C	=	2400	umhos/cm	2007 - 2008
62	SW - 3	12/28/2007	Iron Total	=	1.2	mg/L	2007 - 2008

Criteria - EPA Benchmarks			
Parameter	Units	Benchmark Value	Source
Chemical Oxygen Demand (COD)	mg/L	120	MSGP(b)
Total Suspended Solids (TSS)	mg/L	100	MSGP(a)
Oil and Grease	mg/L	15	MSGP(b)
Nitrate + Nitrite Nitrogen	mg/L	0.68	MSGP(b)
pH	SU - low	6	MSGP(b)
pH	SU - high	9	MSGP(b)
Aluminum Total	mg/L	0.75	MSGP(a)
Ammonia Total (as N)	mg/L	19	MSGP(b)

Arsenic Total	mg/L	0.16854	MSGP(b)
Benzene	mg/L	0.01	MSGP(b)
Copper Total	mg/L	0.0636	MSGP(b)*
Iron Total	mg/L	1	MSGP(b)
Lead Total	mg/L	0.0816	MSGP(b)*
Toluene	mg/L	10	MSGP(b)
Mercury Total	mg/L	0.0024	MSGP(b)
Nickel Total	mg/L	1.417	MSGP(b)*
Phenols, Total	mg/L	1	MSGP(b)
Pyrene	mg/L	0.01	MSGP(b)
Selenium Total	mg/L	0.2385	MSGP(b)
Silver Total	mg/L	0.0318	MSGP(b)*
Cadmium Total	mg/L	0.0159	MSGP(b)*
Trichloroethylene	mg/L	0.0027	MSGP(b)
Zinc Total	mg/L	0.117	MSGP(b)*
Cyanide Total (as CN)	mg/L	0.0636	MSGP(b)
Magnesium Total	mg/L	0.0636	MSGP(b)
Electrical Conductivity @ 25 Deg. C	umhos/cm	200	

MSGP (a) = 2008 sector-specific numeric limits

MSGP (b) = 2000 benchmarks

\*Hardness dependent in freshwater

Criteria - Basin Plan			
Parameter	Units	Benchmark Value	Source
Arsenic Total	mg/L	0.069	BP
Cadium, Total	mg/L	0.042	BP
Chromium VI	mg/L	1.1	BP
Copper Total	mg/L	0.0108	BP - SSOs
Cyanide Total (as CN)	mg/L	0.0094	BP - SSOs
Lead Total	mg/L	0.22	BP
Mercury Total	mg/L	0.0021	BP
Selenium Total	mg/L	0.29	BP
Silver Total	mg/L	0.0019	BP
Zinc Total	mg/L	0.09	BP
PAHs	mg/L	0.015	BP
Nickel Total	mg/L	0.0624	BP - SSOs

BP = Basin Plan

SSO = Site Specific  
Objectives

**Attachment 4: Alleged Dates of Zanker Violations 2007 to Present**

Days with Precipitation One Tenth of an Inch or Greater, as reported by NOAA's National Climatic Data Center, San Jose station data available through September 2007, Palo Alto data used from October 2007-present. <http://www7.ncdc.noaa.gov/IPS/coop/coop.html>.

2007	2008	2009	2010	2011
1/4/2007	1/3/2008	1/22/2009	1/18/2010	1/2/2011
1/16/2007	1/5/2008	2/5/2009	1/19/2010	1/30/2011
1/27/2007	1/6/2008	2/7/2009	1/20/2010	1/31/2011
2/9/2007	1/10/2008	2/9/2009	1/21/2010	2/16/2011
2/10/2007	1/22/2008	2/12/2009	1/22/2010	2/17/2011
2/11/2007	1/26/2008	2/13/2009	1/23/2010	2/18/2011
2/12/2007	1/27/2008	2/14/2009	2/5/2010	2/19/2011
2/22/2007	1/28/2008	2/15/2009	2/06/2010	2/20/2011
2/25/2007	1/30/2008	2/23/2009	2/09/2010	2/25/2011
2/26/2007	2/1/2008	3/2/2009	2/22/2010	3/6/2011
2/27/2007	2/20/2008	3/4/2009	2/24/2010	3/16/2011
3/20/2007	2/22/2008	3/5/2009	2/27/2010	3/19/2011
3/26/2007	2/23/2008	3/22/2009	3/2/2010	3/20/2011
3/27/2007	2/24/2008	4/9/2009	3/3/2010	3/21/2011
4/11/2007	2/25/2008	5/2/2009	3/4/2010	3/23/2011
4/14/2007	3/15/2008	5/5/2009	3/9/2010	3/24/2011
4/20/2007	10/4/2008	9/22/2009	3/10/2010	3/25/2011
4/21/2007	11/1/2008	10/13/2009	3/12/2010	3/26/2011
4/22/2007	11/2/2008	10/14/2009	3/25/2010	3/28/2011
9/22/2007	11/4/2008	10/20/2009	3/30/2010	6/4/2011
10/09/2007	11/26/2008	12/06/2009	3/31/2010	6/5/2011
10/12/2007	12/16/2008	12/11/2009	4/1/2010	6/29/2011
11/11/2007	12/19/2008	12/12/2009	4/5/2010	10/4/2011
12/04/2007	12/22/2008	12/13/2009	4/12/2010	10/5/2011
12/17/2007	12/23/2008	12/27/2009	4/13/2010	10/7/2011
12/18/2007	12/25/2008		4/20/2010	10/11/2011
12/19/2007			4/22/2010	11/4/2011
12/20/2007			4/27/2010	11/6/2011
12/28/2007			4/28/2010	11/20/2011
			4/29/2010	
			5/11/2010	
			5/18/2010	
			5/26/2010	
			11/8/2010	
			11/20/2010	
			11/21/2010	
			11/27/2010	
			12/6/2010	
			12/17/2010	
			12/18/2010	
			12/19/2010	
			12/20/2010	
			12/22/2010	
			12/29/2010	

**Attachment 5: Water Quality Standards**

<b>Parameter</b>	<b>Units</b>	<b>Water quality standard</b>	<b>Source</b>
Arsenic Total	mg/L	0.069	Basin Plan
Cadium, Total	mg/L	0.042	Basin Plan
Chromium VI	mg/L	1.1	Basin Plan
Copper Total	mg/L	0.0108	Basin Plan, Site Specific Objectives
Cyanide Total (as CN)	mg/L	0.0094	Basin Plan, Site Specific Objectives
Lead Total	mg/L	0.22	Basin Plan/California Toxics Rule
Mercury Total	mg/L	0.0021	Basin Plan
Selenium Total	mg/L	0.29	Basin Plan/California Toxics Rule
Silver Total	mg/L	0.0019	Basin Plan
Zinc Total	mg/L	0.09	Basin Plan/California Toxics Rule
PAHs	mg/L	0.015	Basin Plan
Nickel Total	mg/L	0.0624	Basin Plan, Site Specific Objectives